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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/010,563	10/26/2001	Douglas H. Bedgood	340201-1010	6833

24504 7590 01/13/2004

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EXAMINER

MATHEW, FENN C

ART UNIT PAPER NUMBER

3764

DATE MAILED: 01/13/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/010,563

Applicant(s)

BEDGOOD, DOUGLAS H.

Examiner

Fenn C Mathew

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 24 October 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,2,11 and 15-31 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,2,11 and 15-31 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Election/Restrictions

Applicant's election with traverse of group I in Paper No. 9 is acknowledged. The traversal is on the ground(s) that amendments to the method claims have been amended. This is found persuasive. Claims 1, 2, 11, and 15-31 are pending.

Claim Rejections - 35 USC § 103

1. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
2. Claims 1-2, 15-17, and 20-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kurosawa (JP06-47082). Kurosawa teaches a foot massager comprising a base (10) and rigid massage members (22), and mounting members (13) fixed to the bottom surface of the base and adapted to support the base and the massage member while pressure is applied thereto (fig. 8). Kurosawa in figures 8-9 show the massage member (22) having a substantially ellipsoid shape and approximately circular cross section. Kurosawa lacks a rigid base, however, the feature of choosing a rigid base for supporting the massage members is considered as an obvious design choice since rigid bases are notoriously old and well known in the massaging art. Furthermore, Kurosawa appears to show that the massage members may be removed from cavities (fig. 8-9), and furthermore would allow one portion of the massage member to be removed while the other is pivoted.

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3. Regarding claim 2 and 22, Kurosawa does not explicitly state that the two massage member being arranged in a substantially V-shaped configuration or substantially L-shaped configuration. However, the feature of arranging massage members in a particular shape e.g. V-shape configuration is considered as an obvious design choice, since the configuration is not critical (see page 6, lines 9-12 of the applicant's specification) and it appears that Kurosawa's massage members would perform equally well with the V-shaped configuration or L-shaped configuration.

4. Referring to claims 15-17, Kurosawa teaches the recited structure above. The method of use would be obvious to the skilled artisan, as the device may be placed on any support surface, and can be engaged by the feet of a user, thereby providing massaging effects to the muscles of the feet.

5. Claims 11 and 18-21 and 23-31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kurosawa as applied to claim 1 above, and further in view of Voykin (U.S. 4,852,553). Kurosawa has the mounting members (13) for preventing the base from slipping (col. 4, lines 20-21) instead of suction cups. However, Voykin teaches suction cups (37) (figure 2e). Therefore, it would have been obvious to one having ordinary skill in the art at the time of invention to substitute Kurosawa's element (13) with suction cups as taught by Voykin so as to be able to more securely fix the device on the floor.

6. Referring to claims 23-31, the modified Kurosawa has disclosed a device including mounting means which allow the device to be mounted in different positions

on different support surfaces, and is capable of permitting a user to engage in various massage techniques thereby affecting various muscle areas.

Response to Arguments

7. Applicant's arguments, with respect to drawing objections and rejections under 35 U.S.C. 112 have been fully considered and are persuasive. The aforementioned objections have been withdrawn.

8. Applicant's arguments filed 06/20/2003 have been fully considered but they are not persuasive. Kurosawa discloses the claimed structure. Limitations drawn to functional recitations are not given patentable weight if they are in narrative form. In order to be given patentable weight, a functional recitation must be expressed as a "means" for performing the specified function, as set forth in 35 USC 11, 6th paragraph and must be supported by recitation in the claim of sufficient structure to warrant the presence of the functional language. *In re Fuller*, 1929 C.D. 172; 388 O.G. 279. In the instant case, applicant has not provided any distinguishing structural limitations that would warrant the presence of the functional language, as the claimed structure is broadly drafted, and the device of Kurosawa teaches the claimed structural limitations. With regards to claims 23-31, applicant has merely stated that the device is placed in varying positions in order so that the device is capable of massaging various muscle groups. Applicant has provided no specificity to these positions, nor has applicant provided any further structure to further limit the device over the teaching of Kurosawa.

Conclusion

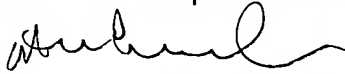
9. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Fenn C Mathew whose telephone number is (703) 305-2846. The examiner can normally be reached on Monday - Friday 9:00am - 5:30pm.

The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9302.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1148.


NICHOLAS D. LUCCHESI
SUPERVISOR/PATENT EXAMINER
TECHNOLOGY CENTER 3700


fcm
January 10, 2004